

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

**Brian Keith Alford,**

Plaintiff,

VS.

Robert Zilles, *et al.*,

Defendants.

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) Case Number: 3:21-cv-1123  
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) Judge: James G. Carr  
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**SECOND MOTION FOR EXTENSION OF TIME TO SERVE COMPLAINT AND  
MOTION FOR IN-PERSON SERVICE VIA THE U.S. MARSHALL SERVICE**

Plaintiff Brian Keith Alford (“Alford”), through counsel, respectfully files this Second Motion for Extension of Time to serve Defendant Lawrence M. Porter (“Porter”) with a copy of the complaint pursuant to Fed. R. Civ. P. 6(B)(1) and Motion for In-Person Service via the U.S. Marshal Service. In support of the instant Motions, Alford states as follows:

“Proper service of process is required in order for this Court to obtain in personam jurisdiction over each defendant.” *Grubb v. Collins*, No. 1:09-cv-263, 2010 U.S. Dist. LEXIS 90984, at \*2 (S.D. Ohio July 14, 2010) (citing to *O.J. Distrib., Inc. v. Hornell Brewing Co., Inc.*, 340 F.3d 345, 353 (6th Cir. 2003)). “Plaintiff bears the burden of exercising due diligence in perfecting service of process and of showing that proper service has been made.” *Collins*, 2010 U.S. Dist. LEXIS 90984, at \*2 (citing to *Habib v. General Motors Corp.*, 15 F.3d 72, 74-5 (6th

Cir. 1994)). Service of a complaint must be made within 90 days of the filing of a complaint. Fed. R. Civ. P. 4(m). A court may extend time for good cause. Fed. R. Civ. P. 6(b)(1).

“What may a court do if the plaintiff does not show good cause for the deficient service? [The United States Court of Appeal for the Sixth Circuit] have explained that Rule 4 permits the district court discretion to either allow late service or dismiss the case without prejudice.” *Savoie v. City of E. Lansing*, No. 21-2684, 2022 U.S. App. LEXIS 23854, at \*6 (6th Cir. Aug. 24, 2022). “Good cause is a flexible standard heavily dependent on the facts of the particular case as found and weighed by the district court in its equitable discretion.” *United States v. Trujillo-Molina*, 678 F. App’x 335, 338 (6th Cir. 2017) (citing *United States v. Walden*, 625 F.3d 961, 965 (6th Cir. 2010)).

On October 8, 2024. This Court granted Alford until November 6, 2024, to serve Porter and another defendant. Non-Document Order 20241080. The other defendant has since filed an answer. See Doc. No. 52. On November 14, 2024, a return of service was filed by the United States Marshals Service indicating “unable to deliver, returned.” Doc. No. 51 at 1. Based on communication with the United States Marshals Service, the FedEx tracking number of the summons was 779322844176. The tracking number indicates that delivery was attempted on October 22, 23, 24, 25, and 28, 2024, all between the hours of 12:26 p.m. Eastern Standard Time (“EST”) and 3:08 p.m. EST. On each date, the tracking number indicates “[c]ustomer not available or business closed.” It is believed that Porter—a physician—was at work during each delivery attempt.

In all in forma pauperis cases, “the U.S. Marshal shall serve the summons and complaint...” LR 4.1(b). Additionally, “[t]he provision for waiver of service in Fed. R. Civ. P. 4(d) shall not apply” in such cases. *Id.* Therefore, Alford cannot complete service through a private

process server in the evening when Porter has returned to his home from work, nor can Alford request that Porter waive service. Therefore, Alford respectfully requests that this Court order the U.S. Marshall Service to serve Porter at 2579 Brentwood Rd., Beachwood, OH 44122, in the evening hours.

### **CONCLUSION**

This Court should (2) grant the instant Motion for good cause shown and permit Alford an additional thirty (“30”) days to serve defendant Lawrence M. Porter. It should also (2) order the U.S. Marshall Service to attempt to serve Porter via in-person service in the evening.

Dated: December 3, 2024

Respectfully submitted,



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*Attorney for Plaintiff, Brian Keith Alford*

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by Electronic Filing (CM/ECF) on December 3, 2024, on all counsel or parties of record on the service list below.



Joseph Sobecki

**SERVICE LIST**

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